

Claims for credit must include the information required under 86 Ill. Adm. Code 130.1501(b). (This is a GIL).

June 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated May 18, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are a manufacturer of custom signage 99% of the time in which case we have charged sales tax since 1997. It has been brought to our attention that this type of signage is not taxable per section 130.2155 (attached). This information was sent to us by PEROSN taxpayer assistance Tel. 800 732 8866.

Based on the above how do we correct this situation? We can not return the taxes unless we are refunded said taxes, as it would be double hit on us and in addition we are a small company.

It is extremely difficult to answer your question with the limited amount of information you have provided. The answer depends upon the nature of the signage.

Persons who permanently affix tangible personal property to real estate in Illinois are considered to be construction contractors, and owe Use Tax on the cost price of the tangible personal property which they permanently affix to real estate. See the enclosed copies of Section 130.1940 and 130.2075. Assuming that your company is a construction contractor that permanently affixes the sign to real estate, your company incurs Use Tax on the cost price of the sign. In your case, since you are the manufacturer, the base for your Use Tax liability would be the materials that comprise the sign.

The following principles apply to persons who sell signs to others, including sales to construction contractors who will permanently incorporate the signs to real estate. Persons who are engaged in the business of making signs that have commercial use or value to persons other than the purchaser, incur Retailers' Occupation Tax on the selling price of the sign. Such signs might include, for instance, generic directional signs, or "for sale," signs. They do not contain the name of the purchaser or other individualized information. The seller would collect the complementary Use Tax from its purchasers. If the signs, however, are specially produced for the purchaser in such a way that they have no value to others than the purchaser, they are subject to the Service

Occupation Tax. An example of this type of sign would be a sign produced on special order for a purchaser that spells out the name of the purchaser or the brand name of the purchaser's product.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. A service customer's liability will hinge upon the method used by the serviceman to calculate his liability. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. These servicemen collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. These servicemen collect the corresponding Service Use Tax from their customers (the Service Use Tax is based upon the serviceman's cost price).

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that

June 22, 1999

their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

You imply that you have been paying Retailers' Occupation Tax and not Service Occupation Tax. If this is the case, it is possible that you may have overpaid the tax you owe the Department. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.1501, which is the regulation governing claims to recover erroneously paid tax. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. However, only the remitters of the tax erroneously paid to the Department are authorized to obtain credit or refunds. In order to obtain a credit or refund, claimants must first demonstrate that they have borne the burden of the tax erroneously paid. In situations where customers pay tax to their suppliers who remit the tax to the Department, the remitter of the tax must first unconditionally refund to the customer the amount of tax collected from the customer in order to demonstrate that he has borne the burden of the tax erroneously paid. If this is not demonstrated, the claim will be denied. Claims for credit must include the information required under Section 130.1501(b).

The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 1/2 years and expires in 6 month blocks. For example, on July 1, 1999, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 1996.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.